

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ETHYPHARM S.A. France and
ETHYPHARM S.A. Spain,

Plaintiffs,

v.

BENTLEY PHARMACEUTICALS, INC.

Defendant

C.A. No.: 04-1300 (SLR)

DECLARATION OF ANTONIO CASTÁN


ANTONIO CASTÁN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the Spanish law firm of Elzaburu. I have been licensed to practice law in Spain since 1985. I have personal knowledge of the facts stated in this declaration and could testify to them if called as a witness. I submit this declaration in support of Ethypharm S.A. France's and Ethypharm S.A. Spain's (collectively "Ethypharm") Opposition to Defendant Bentley Pharmaceuticals, Inc.'s ("Bentley") Motion for Summary Judgment & Dismissal.

2. Under Spanish law, Spanish companies are required to file with the Spanish authorities certain documents indicating formal actions taken by the company, including actions that define who holds legal authority for the company. A formal statement of these corporate documents is available to the public from the "Registro Mercantil Central" (Spanish Commercial Registry), in Madrid.

3. Attached as Exhibit A (hereinafter "Ex. A") are true and correct copies of official documents that my law firm received from the Spanish Commercial Registry, in Madrid, that

relate to actions or activities of Laboratorios Belmac, the Spanish subsidiary of Bentley in the United States.




4. James R. Murphy was appointed to the position of "Consejero Delegado" of Laboratorios Belmac on January 3, 1995. Ex. A, back of page 069. Mr. James R. Murphy was reappointed "Consejero Delegado" of Laboratorios Belmac on February 3, 1999, Ex. A, at 079, and again on February 9, 2001. Ex. A, at page 081 and back. Mr. James R. Murphy was the only "Consejero Delegado" or "Consejero Delegado Único" from January 3, 1995, until February 21, 2002, when Mr. Michael Price, the Chief Financial Officer ("CFO") of Bentley, was appointed to hold the position of "Consejero Delegado" as well. Ex. A., at page 203. The "Consejero Delegado" of a corporation is the highest position in a company, even above the President. It is an executive position, not merely a representative position. When the "Consejero Delegado" is in this position alone, he holds all the powers and authorities of the corporation and may delegate these powers and revoke such delegations at will. All other individuals employed by Laboratorios Belmac may exercise only the limited corporate powers that are explicitly delegated to them by Mr. Murphy. At all times, however, Mr. Murphy has retained the authority to revoke or modify these powers and to hire and fire those who hold delegated powers as employees of the company.

5. There is no impediment in Spanish law to a general manager, such as Adolfo Herrera, holding the position of "Consejero Delegado". However, at no time has Adolfo Herrera held this position for Laboratorios Belmac.

6. I address myself to a few of the statements in the Declaration of James R. Murphy, dated November 3, 2004, attached hereto as Exhibit B (hereinafter "Ex. B"), and the Declaration of Adolfo Herrera, dated November 4, 2004, attached hereto as Exhibit C

(hereinafter "Ex. C"), concerning the structure and organization of Bentley's subsidiary, Laboratorios Belmac:

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- a. Mr. Murphy and Mr. Herrera state that "[Laboratorios] Belmac elects its own board of directors". Ex. B, ¶ 7; Ex. C, ¶ 3. In fact, as indicated in official documents that must be filed with the Spanish authorities, the members of the board of directors of Laboratorios Belmac are elected at the Laboratorios Belmac shareholders general meeting, at which Bentley, as Laboratorios Belmac's sole shareholder, elects the Laboratorios Belmac board of directors. The minutes of these meetings indicate that it is James R. Murphy himself who appears on behalf of Bentley to determine who will be elected to the Laboratorios Belmac board of directors.
- b. Mr. Murphy and Mr. Herrera state "[Adolfo Herrera] has significant autonomous authority over the operations of [Laboratorios] Belmac. The extent of [Mr. Herrera's] authority is contained in the delegation of power from the [Laboratorios] Belmac board of directors ... which is required under Spanish law." Ex. B, ¶ 9; Ex. C, ¶ 5. In fact, throughout the times relevant to this suit, as indicated in official documents that must be filed with the Spanish authorities, it was James R. Murphy alone, as "Consejero Delegado" of Laboratorios Belmac, who held the corporate powers of Laboratorios Belmac and could delegate and revoke these at will. It was James R. Murphy who delegated powers with certain limitations to Adolfo Herrera by public deed of June 15, 1999, not the Laboratorios Belmac board of directors. Ex. A back of page 079.

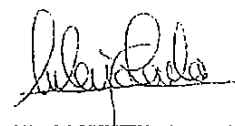
- c. Mr. Murphy states "The [Laboratorios] Belmac board had granted similar delegations of powers to Mr. Herrera and previous general managers throughout the time that [Laboratorios] Belmac interacted with Ethypharm." Ex. B, ¶ 10. Similarly, Mr. Herrera states: "The [Laboratorios] Belmac board had granted similar delegations of powers to myself and my predecessors throughout the time that [Laboratorios] Belmac interacted with the Spanish company Ethypharm S.A.". Ex. C, ¶ 6. In fact, it was James R. Murphy alone, not the board of Laboratorios Belmac, who granted certain delegations of powers to Mr. Clemente Gonzales Azpetia, the general manager of Laboratorios Belmac who preceded Adolfo Herrera, by public deed of January 18, 1996. Ex. A, at page 072.
- d. Mr. Herrera states: "Bentley's board of directors does not control or direct [Laboratorios] Belmac's operations." Ex. C, ¶ 11. In fact, Bentley has been qualified to hold, through its control of Laboratorios Belmac's governing bodies (the Laboratorios Belmac board of directors and the Laboratorios Belmac shareholders' meeting), almost absolute control over Laboratorios Belmac. Bentley is the sole shareholder of Laboratorios Belmac. The three members of the board of directors of Laboratorios Belmac since 9 February 2001 are James R. Murphy, Michael D. Price and Adolfo Herrera. During their tenure on the Laboratorios Belmac board, all three have been top executives of Bentley (James R. Murphy, Bentley's CEO, Michael D. Price, Bentley's CFO, and Adolfo Herrera,

Bentley's Vice President) according to the information I have been given.

Therefore, while Laboratorios Belmac is a separate legal entity from Bentley under Spanish law, it is not autonomous in practice.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Madrid, Spain.
September 14, 2006

A handwritten signature in dark ink, appearing to read 'Antonio Castán', is written over a horizontal line.

Antonio Castán